THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.No.7442 of 2006

Dt.17.4.2006

Between:

Lt.Col.Virender Malhotra and another … Petitioners

And

The Municipal Corporation of Hyderabad,

Rep. By its Commissioner, Hyderabad

And another

…Respondents

ORDER:

Petitioners seeks a writ of mandamus to declare the impugned notice No.24, dated 12.4.2006 issued by the first respondent under Section 636 of Hyderabad Municipal Corporation Act, 1955 as illegal and arbitrary.

The first petitioner is the owner and possessor of the premises bearing Municipal No.3-6-63/1 and the 2nd petitioner also is the owner and possessor of the premises No.5-3-63/2,3,4 and 5 situated at Basheerbagh, Hyderabad having obtained the

same from the 2nd respondent under an agreement of sale. It is stated that the entire premises bearing No.3-6-63 has been constructed as per the sanctioned plan in the year 1981 and there is no violation of any of the rules and regulations. The first respondent Corporation has sanctioned the plan for Ground + 6 floors and there is no cellar or stilt floor. While so, the first respondent without issuing a show cause notice, issued the impugned notice No.24, dated 12.4.2006 under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') stating that the petitioners have made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road and creating lot of traffic congestion, accident and public nuisance and also that the High Court in *suo motu* contempt case in C.C.No.101 of 1996, dated 28.2.1996, ordered that steps be taken immediately for creation of parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioners were directed to remove the said unauthorized structures within three days.

Heard the leaned counsel for the petitioners and the learned standing counsel appearing for the respondents.

I am of the opinion that issuing notice under Section 636 of the Act is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioner to remove the structures within three days.

Having regard to the facts and circumstances of the case, the impugned notice No.24, dated 12.4.2006, is directed to be treated as a show cause notice only permitting the petitioners to file representation/explanation within one week from the

date of receipt of a copy of this order and till such representation/ explanation is considered and appropriate orders are passed and communicated to the petitioners, the respondents shall not remove or demolish the premises of the petitioners.

The writ petition is accordingly disposed of. No costs.

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V.ESWARAIAH, J.

April 17, 2006.

Note: Issue copy by tomorrow

B.O.

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